Supreme Court, U.S.
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No. 02-246

IN THE

Supreme Court of the United States

WALLACK MANAGEMENT CO., INC.,
625 PARK CORPORATION,
and IRA LEON RENNERT,

Petitioners,

v.

GOYA FOODS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should grant certiorari to consider Petitioners' challenge to their civil contempt liability to pay compensation for violating two express orders of the United States District Court, where Petitioners had undisputed actual knowledge of those orders but knowingly chose to participate in a transaction unambiguously forbidden by the orders, and where the specific legal issue raised by Petitioners would affect no other litigants but arose from a complex, fact-bound procedural history and what the Court of Appeals termed "idiosyncratic circumstances."

2. Whether this Court should grant certiorari to review the lower courts' construction of Rule 56.4 of the Puerto Rico Rules of Civil Procedure, a matter governed entirely by Puerto Rico local law and raising no federal question, much less an important one.

PARTIES TO THE PROCEEDING

The parties to this case are Wallack Management Co., Inc., 625 Park Corporation, and Ira Leon Rennert as Petitioners, and Goya Foods, Inc. as Respondent.

The petition states that Ulpiano Unanue-Casal a/k/a Charles Unanue, Liliane Unanue, and Kalif Trading, Inc. have been served as respondents. (Pet. iii) While those litigants were parties to the underlying action in the United States District Court for the District of Puerto Rico, they were not parties to the third-party contempt proceeding that Goya Foods, Inc. brought against Petitioners in the District Court, and they were not parties to Petitioners' appeal from the District Court's contempt adjudication against them to the United States Court of Appeals for the First Circuit.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6, Respondent Goya Foods, Inc. states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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Other Authority:

Robert L. Stern, Eugene Gressman *et al.*, *Supreme Court Practice* 134 (8th ed. 2002) 21

Respondent, Goya Foods, Inc. ("Goya"), respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

PRELIMINARY STATEMENT

Petitioners were rightly held in civil contempt because, despite their undisputed actual knowledge of two District Court orders in Goya's favor which prohibited the sale or transfer of a luxury cooperative apartment in Manhattan, as well as of a subsequent District Court order confirming that the prohibition remained in effect, Petitioners each played an indispensable role in a sale of the apartment in 1998 for $4,600,000 in cash. Strikingly, Petitioners were so well aware that Goya would bring contempt proceedings against them once the sale came to light that they contracted for the sale to be kept secret. They also negotiated and executed an indemnification and hold-harmless letter under which one Petitioner agreed to defend the others against the inevitable litigation and to pay the judgment that might be awarded against them on Goya's claim.

In response to Goya's contempt application, Petitioners raised a technical argument that the orders prohibiting alienation of the apartment were no longer in effect in 1998, based on their disregard of the clear purpose and intent of the orders and their misunderstanding of the Puerto Rico Rule of Civil Procedure under which the orders were entered. The District Court and the United States Court of Appeals for the First Circuit each independently evaluated Petitioners' argument and rejected it as unsupported by either the purpose of the orders and the rules authorizing them or by the Puerto Rico caselaw interpreting those rules. The courts also found that Goya had established all the remaining elements

necessary to hold Petitioners in civil contempt: although Petitioners were non-parties to the underlying action, they had acted in concert with the named defendants in a transaction that violated court orders of which they were actually aware, aiding and abetting the named defendants' contempt of those orders, and thereby causing Goya damages for which Petitioners were required to compensate Goya in the civil contempt proceeding.

In their petition for certiorari, Petitioners seek to raise two issues. The first of these challenges the compensatory civil contempt adjudication against Petitioners. The petition, however, does not allege any violation of this Court's decisions, any conflict of lower-court decisions or widespread uncertainty as to the law of civil contempt, or any unsettled but important issue of federal law warranting this Court's attention. All that is involved is the application of generally settled law to a *sui generis* procedural context and what the Court of Appeals aptly called "the idiosyncratic circumstances of this case." (Pet. App. 18a)

The petition's second issue challenges the Court of Appeals' analysis of an issue arising under Rule 56.4 of the Puerto Rico Rules of Civil Procedure. On its face, this is an issue of Puerto Rico local law and is thus, by definition, unsuited for this Court's review on certiorari. Petitioners attempt to bootstrap their Puerto Rico law argument, which was cogently rejected by both lower courts, into a federal issue by claiming that the Court of Appeals' detailed analysis of Puerto Rico Supreme Court caselaw reached an incorrect result and therefore violated the *Erie* doctrine. That is woefully insufficient to raise an important issue of federal law.

Because this case meets none of this Court's standards for granting review, and the lower courts engaged in a legally correct analysis to reach an entirely just result, certiorari should be denied.

STATEMENT OF THE CASE

The relevant facts and procedural history are cogently set forth in the opinions below. (*See* Pet. App. 3a-8a (Court of Appeals opinion), 33a-44a (District Court opinion)) Therefore, they need be summarized only briefly here.

A. The District Court Enters the Orders Prohibiting Alienation of Apartment 10A

In November 1995, Goya commenced an action in the United States District Court for the District of Puerto Rico (the "Puerto Rico Action"). In that action, Goya sought to enforce a $6,900,000 New Jersey state-court judgment it had previously obtained against defendant Charles Unanue, by obtaining a determination that certain assets nominally held in the names of third parties actually belonged to Charles. Among these assets was a luxury cooperative apartment located at 625 Park Avenue in New York, New York ("Apartment 10A"), the cooperative shares corresponding to which were held in the name of Charles' wife, defendant Liliane Unanue.

At the outset of the Puerto Rico Action, Goya asked United States District Judge José Antonio Fusté to enter provisional remedy orders prohibiting the alienation of various assets belonging to defendants, including Apartment 10A. Judge Fusté granted this relief and entered orders prohibiting defendants Charles and Liliane Unanue and their

"agents, employees, and all persons holding property for them or acting in concert with them" from "alienating or in any way assigning, transferring, selling or otherwise disposing or encumbering" Apartment 10A (the "Orders Prohibiting Alienation"). (*See* Pet. 46a-49a (quoting the orders)) The Orders Prohibiting Alienation were entered pursuant to Fed. R. Civ. P. 64, which provides that such remedies "for the purpose of securing satisfaction of the judgment ultimately to be entered in the action" may be granted in accordance with forum-state law, and Rules 56.1 and 56.4 of the Puerto Rico Rules of Civil Procedure.

Goya immediately served the Orders Prohibiting Alienation on defendants Charles and Liliane Unanue. To ensure that the orders would be effective, Goya also sent copies of the orders to Petitioner 625 Park Corporation ("625 Park"), the cooperative corporation that owns the building and grounds at 625 Park Avenue, via the building's managing agent, Petitioner Wallack Management Company, Inc. ("Wallack Management"). Because the approval of 625 Park's board of directors is a prerequisite to any sale or transfer of an apartment in the building, Goya's placing 625 Park on notice of the Orders Prohibiting Alienation was a step reasonably calculated to prevent any transfer from taking place.

Because of "the idiosyncratic circumstances of this case," including Apartment 10A's status as a cooperative (so that its ownership was formally represented as shares of stock in the cooperative corporation, rather than as real estate) and its location outside Puerto Rico, it was impossible or impracticable for Goya to take additional steps to memorialize the orders, such as recording the Orders Prohibiting Alienation in any real property registry or

physically seizing any associated asset. (*See* Pet. App. 5a n.1, 18a & n.7) Accordingly, the Orders Prohibiting Alienation contained no language requiring Goya to take these steps, and the defendants did not challenge the orders for failing to require them. Nonetheless, it is undisputed that by December 1995, as a result of the notification provided by Goya, the three Petitioners — Wallack Management, 625 Park, and Ira Leon Rennert (who was a resident, shareholder, officer, director, and Executive Committee member of 625 Park) — all had actual knowledge of the Orders Prohibiting Alienation. (*See, e.g.*, Pet. App. 5a-6a, 14a, 36a-37a, 50a) Confirming Petitioners' knowledge, in September 1997, about two years after the Orders Prohibiting Alienation were first entered, Liliane wrote to Burton Wallack (an officer and director of both 625 Park and Wallack Management), reiterating that the orders prohibited any sale or transfer of Apartment 10A. (Pet. App. 37a)

After discovery proceedings and a 10-day trial of the Puerto Rico Action, in October 1997, Judge Fusté handed down his decision in Goya's favor, holding that Apartment 10A, among other assets, was beneficially owned by Charles Unanue and therefore subject to execution to satisfy Goya's New Jersey judgment against him. *Goya Foods, Inc. v. Unanue-Casal*, 982 F. Supp. 103 (D.P.R. 1997). However, Judge Fusté stayed execution of his judgment until defendants' appeals from both his decision and the underlying New Jersey judgment were resolved. *Id.* at 112 (*see also* Pet. App. 5a-6a, 37a).[1] In February

1. In due course, the Court of Appeals affirmed the District Court's judgment in Goya's favor, specifically including its directive that Goya's judgment could be enforced against Apartment 10A. *Goya Foods, Inc. v. Unanue-Casal*, 233 F.3d 38, 42 n.3 (1st Cir. 2000), *cert. denied*, 532 U.S. 1022 (2001). Earlier, the New Jersey state appellate courts had affirmed the underlying $6.9 million money judgment against Charles. (Cont'd)

1998, Petitioners were notified of Judge Fusté's decision in Goya's favor and provided with copies of Judge Fusté's opinion and judgment (including the stay pending appeal). (Pet. App. 5a-6a, 38a) Goya's letter forwarding these documents to Petitioners, like its earlier letter transmitting the Orders Prohibiting Alienation themselves, invited Petitioners to contact Goya's counsel if they needed any further information, and asked Petitioners to notify them of any proposed transfer of Apartment 10A. (*See* Pet. App. 6a, 38a) Petitioners never did so.

B. The District Court Confirms that the Orders Remain in Force in 1998

Shortly thereafter, also in February 1998, Liliane Unanue asked the District Court to modify the Orders Prohibiting Alienation so that she could sell Apartment 10A. This was one of a long series of motions that defendants in the Puerto Rico Action had filed seeking to vacate or modify the Orders Prohibiting Alienation and various other provisional remedy orders entered in the case.

In response to Liliane Unanue's motion, Judge Fusté directed counsel for Liliane and for Goya to meet to discuss alternatives that might allow Liliane to sell the apartment while preserving Goya's ability to enforce its judgment, and report back to him the results of that meeting. On March 13, 1998, Liliane Unanue's attorney, Jan Alan Brody, wrote to Wallack stating:

> Mrs. Unanue plans on selling her proprietary shares [in Apartment 10A]; however, *there is*

(Cont'd)
Matter of Unanue, 311 N.J. Super. 589, 710 A.2d 1036 (App. Div.), *cert. denied*, 157 N.J. 541, 724 A.2d 801 (1998), *cert. denied*, 526 U.S. 1051, *rehearing denied*, 526 U.S. 1140 (1999).

> *presently a restraint against alienation of such shares* entered in a proceeding before the United States District Court for the District of Puerto Rico. In response to Mrs. Unanue's emergency motion for leave to sell the shares or, in the alternative, directing the plaintiff in that action, Goya Foods, Inc., to pay all of the arrears and future maintenance while *the restraint on alienation remains in effect*, the Court entered an order on March 9, 1998 directing counsel for the parties to meet to discuss a sale or payment of the arrears and future maintenance by Goya Foods, Inc. within five (5) days and *to report back to the Court so that it may make a final decision.*

(*See* Pet. App. 6a, 38a-39a (emphasis added)) Wallack wrote back to Brody the same day, asking that he "notify me of the Court's decision [on Liliane Unanue's motion] as outlined in your letter." (*See id.*) Thus, Wallack Management and 625 Park knew that Liliane Unanue, her attorney, and most importantly, the District Court itself all understood five months *after* the judgment in Goya's favor was entered that any sale of Apartment 10A *was still prohibited* — and would remain so unless and until the court vacated the Orders Prohibiting Alienation, which never occurred.

C. Petitioners Participate in the Transfer of Apartment 10A Notwithstanding the Orders

Nonetheless, in April 1998, Liliane Unanue retained Wallack Management to act as her real estate broker in a sale of Apartment 10A. In May, Rennert agreed to buy Apartment 10A from Liliane for $4,600,000. Although the lawyer Liliane retained to represent her in the sale withdrew

upon learning of the Orders Prohibiting Alienation — and became the second lawyer for Liliane (along with Brody) to advise Petitioners that Apartment 10A could not lawfully be sold (Pet. App. 6a n.2, 39a-40a) — the parties proceeded with the transaction.

In June 1998, Rennert asked 625 Park's board of directors to approve his acquisition of Apartment 10A, a prerequisite to closing the sale. Normally this would have been a routine step inasmuch as Rennert already owned several other apartments in the building and was one of 625 Park's officers, directors, and Executive Committee members. In this instance, however, as a condition to granting its approval, the 625 Park board required that Rennert *indemnify* 625 Park and Wallack Management from all damages and litigation expenses they might incur based on claims that Goya would assert in this very action. (Pet. App. 7a, 41a) Rennert signed the indemnification demanded by 625 Park, which provided:

> In consideration of the consent of 625 Park Corporation (the "Corporation") to the transfer of the Apartment [10A] to me, I hereby indemnify and hold harmless the Corporation, its officers, directors, shareholders and managing agent [Wallack Management] from and against any actions, claims, damages or costs (including reasonable attorney's fees and costs) incurred or suffered by such person as a result of any claim by Goya Foods, Inc. in the action entitled *Goya Foods, Inc. v. Ulpiano Unanue Casal a/k/a Charles Unanue, Liliane Unanue, and Kalif Trading, Inc.* with Index No. 95-2411 (U.S. Dist. Ct., P.R.) or any action or proceeding connected thereto.

(Pet. App. 41a-42a)

The sale of Apartment 10A closed on June 19, 1998. On that date, at Charles and Liliane Unanue's direction, Rennert wired $4,200,000 of the $4,600,000 purchase price to a bank account in Liliane's name in Lausanne, Switzerland. (Pet. App. 42a) The Unanues' obvious purpose in directing this transfer was to thwart Goya's subsequent ability to recover the proceeds from the sale in later proceedings. At the closing, Wallack Management received $276,000 as its commission for acting as Liliane's real estate agent, and 625 Park received $92,000 as an apartment transfer fee. Rennert and his wife subsequently annexed Apartment 10A to their existing residence at 625 Park, which already included the only other apartment on the 10th floor and the entire 11th floor. (Pet. App. 42a-43a)

D. Petitioners Are Held in Contempt

Rennert and Liliane agreed in the Contract of Sale that the sale of Apartment 10A would be kept confidential, and Goya did not learn of it until October 2000. (Pet. App. 7a, 43a, 57a) When Goya advised Judge Fusté of the sale, he directed Charles and Liliane Unanue to appear before him and show cause why they should not be held in contempt. Charles and Liliane failed to appear as ordered, and the court issued warrants for their arrest. Charles and Liliane also ignored a court order to pay the $4,600,000 sale proceeds to Goya or into court. For the past two years, Charles and Liliane have been fugitives from justice residing in France. *See Goya Foods, Inc. v. Unanue-Casal*, 275 F.3d 124 (1st Cir. 2001), *petitions for cert. filed*, Nos. 02-339 and 02-366 (U.S. Sept. 2002).

In January 2001, Goya commenced this compensatory civil contempt proceeding against the three Petitioners. After briefing and argument, the District Court held Petitioners in

contempt for knowingly violating the Orders Prohibiting Alienation, in a detailed opinion that carefully considered and rejected each of Petitioners' defenses to liability, and awarded Goya compensatory damages of $4,600,000, the amount Rennert paid for Apartment 10A. *Goya Foods, Inc. v. Unanue-Casal (Wallack Management Co.)*, 141 F. Supp. 2d 207 (D.P.R. 2001) (Pet. App. 32a-64a).

Petitioners appealed to the United States Court of Appeals for the First Circuit, which affirmed Judge Fusté's contempt adjudication and the $4,600,000 contempt award, in a comprehensive opinion by Circuit Judge Bruce M. Selya, joined by Senior Circuit Judge Frank M. Coffin and Circuit Judge Kermit V. Lipez. *Goya Foods, Inc. v. Wallack Management Co.*, 290 F.3d 63 (1st Cir. 2002) (Pet. App. 1a-31a). The Court of Appeals rejected Petitioners' principal claim on appeal, which was that the Orders Prohibiting Alienation had lapsed with the entry of the judgment in Goya's favor, holding that the orders were and remained effective against persons who, like Petitioners, had undisputed actual notice of the orders' existence and terms. (Pet. App. 9a-18a) The Court of Appeals further held that even though Petitioners were not parties to the underlying Puerto Rico Action, they were properly held in civil contempt because they aided and abetted defendant Liliane Unanue in violating the orders. In reaching this conclusion, the court followed settled caselaw in holding that Petitioners were not excused from civil contempt liability because they allegedly were under a mistaken view of the law or claimed to have had a good-faith belief that the Orders Prohibiting Alienation had expired. The court further found that the language of the orders was clear and unambiguous and that the issue Petitioners had raised concerning the orders' effectiveness did not constitute the type of ambiguity that could negate

contempt liability. (Pet. App. 18a-24a) Next, the Court of Appeals held that because the facts surrounding Petitioners' conduct were established by documentary evidence, an evidentiary hearing was not required. The court accordingly affirmed the contempt adjudication, as well as the District Court's order that Petitioners pay to Goya a sum equal to the purchase price for Apartment 10A as compensation for the loss Goya had suffered as a result of the contumacious sale. (Pet. App. 25a-27a) Petitioners now seek review on certiorari.

REASONS FOR DENYING THE WRIT

The District Court properly held Petitioners in civil contempt because they knowingly violated the Orders Prohibiting Alienation by engaging in precisely the transaction that those orders unambiguously prohibited. The Court of Appeals affirmed the contempt adjudication for substantially the same reasons expressed by the District Court, while providing additional analysis of Petitioners' primary argument. Both courts explicitly rejected Petitioners' contention that the Orders Prohibiting Alienation had expired before Petitioners violated them in 1998, finding that contention inconsistent both with the purpose and intent of Puerto Rico Rule of Civil Procedure 56 as well as with the Puerto Rico Supreme Court's caselaw applying that rule. In reaching their conclusion, both courts relied in large measure on the undisputed actual notice of the Orders Prohibiting Alienation that Goya had provided to Petitioners. Both courts also held that Petitioners' incorrect argument that the orders had lapsed was insufficient to render the orders "ambiguous" so as to preclude civil contempt liability, rejected their remaining defenses, and required Petitioners to compensate plaintiff Goya for the substantial out-of-pocket loss it suffered from Petitioners' violation of the orders.

The first question presented in the petition for certiorari asks this Court to review and set aside the contempt adjudication against Petitioners. However, the petition identifies no violation of any decision of this Court, no conflict of lower court decisions regarding the applicable principles of compensatory civil contempt, and no important federal question on which this Court's guidance is necessary. All that is involved here is the lower courts' application of broad and generally "well settled" (Pet. 14) contempt principles to "the idiosyncratic circumstances of this case." (Pet. App. 18a)

The petition's second question asks whether the District Court and Court of Appeals correctly interpreted the terms of Puerto Rico Rule of Civil Procedure 56.4. On its face, this issue arises exclusively under the local law of the Commonwealth of Puerto Rico and thus is inherently unworthy of review on certiorari. Petitioners' attempt to bootstrap their claim of error in construing Puerto Rico law into an *Erie* violation adds nothing. The petition should be denied.

A. The Contempt Determination Was Proper And Raises No Issue Warranting Review

"There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *accord, e.g., International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); *see also* 18 U.S.C. § 401(3) (federal court may punish as contempt any "disobedience or resistance to its lawful writ, process, order, rule, decree or command"). Among the purposes of

contempt proceedings is to compensate the party that suffers loss through another's knowing violation of a court order. *Hutto v. Finney*, 437 U.S. 678, 691 (1978); *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). That was the sole purpose of the civil contempt proceeding here. (*See* Pet. App. 25a, 63a)

This Court's contempt caselaw "leaves unaltered the longstanding authority of judges . . . to enter broad compensatory awards for all contempts through civil proceedings." *Bagwell*, 512 U.S. at 838.[2] In our case, the District Court and the Court of Appeals applied traditional contempt principles in holding Petitioners in contempt for knowingly violating the Orders Prohibiting Alienation. In seeking review of that decision, Petitioners do not claim that the contempt adjudication violated any decision of this Court. Nor do they contend that the courts of appeals have reached conflicting decisions on an important legal issue or that the lower courts are in disarray and require this Court's guidance on the standards for civil contempt. To the contrary, Petitioners seem to concede that any "split among the circuits" is "absent" from this case and they describe the applicable law as "well settled." (Pet. 13, 14) Indeed, the opinion that Petitioners quote for two full pages (Pet. 15-17)

2. Petitioners cite many cases in which this Court, in recent years, has exercised its supervisory power to regulate contempt proceedings. However, none of the numerous cases cited by Petitioners in which this Court reviewed and in some instances overturned contempt determinations (Pet. 12-14, 18) involved compensatory civil contempt proceedings awarding damages on behalf of a litigant for violation of a court order, the type of proceeding at issue here. Rather, all involved either *criminal* contempt or *coercive* civil contempt, the types of contempt proceeding that have been viewed as subject to the potential for misuse and as raising potential constitutional issues.

as a fair summary of the law in this area not only was rendered by the same Court of Appeals that decided this case, but was authored by the very same Circuit Judge. *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16-17 (1st Cir. 1991) (Selya, J.).

The narrow issue on which Petitioners seek review is, in the Court of Appeals' words, whether "cobbling together [an assertedly] plausible legal argument about the effectiveness of an order renders the order unclear or ambiguous for contempt purposes." (Pet. App. 23a) As far as the petition shows, that narrow question — whether one can avoid civil contempt liability merely by raising an *incorrect* legal claim as to the *duration* of a court order (as opposed to the *meaning* of the order) — has never previously been the subject of any reported decision of any court anywhere.[3] An issue that appears never to have previously been litigated at the appellate level, and whose resolution would therefore have an impact on few if any other litigants, is a poor candidate for certiorari.

Beyond that, the Court of Appeals' holding — that one who violates a court order may not avoid liability for civil contempt by claiming to have relied on an incorrect view of the law as to whether the order was valid or effective — is correct and consistent with this Court's teachings. The sale of Apartment 10A, in which Petitioners knowingly participated, violated the Orders Prohibiting Alienation,

3. Goya too is unaware of any appellate case addressing this issue. One recent district court case supports Goya's position: *Popular Bank of Fla. v. Banco Popular de P.R.*, 180 F.R.D. 461, 465-66 (S.D. Fla. 1998) (defendants held in civil contempt for violating preliminary injunction of which they had actual knowledge, despite their "good-faith belief that the injunction was without effect and therefore unenforceable" at the time they violated it because the literal terms of the applicable Federal Rule of Civil Procedure had not been complied with).

which the District Court and the Court of Appeals, applying Commonwealth of Puerto Rico law, each independently held *were* in effect in June 1998. Petitioners' contention, in essence, is that they allegedly acted under a mistake of law when they assumed that they were free to disregard the Orders Prohibiting Alienation. This Court has held that such a mistake of law, even if made in good faith (which this one was not), does not negate liability for compensatory civil contempt. "An act does not cease to be a violation of a law and of a decree merely because it may [allegedly] have been done innocently." *McComb v. Jacksonville Paper Co.*, 336 U.S. at 191.[4]

Petitioners' claim that the orders were somehow ambiguous so as to preclude contempt liability is without merit. To be sure, this Court has established that one may not be held in contempt for violating an order "too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476

4. For that matter, even one who justifiably believes that a court order is unlawful, invalid or even unconstitutional, must obey the order unless and until it is modified or set aside on appeal, rather than disregard it. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995); *Walker v. City of Birmingham*, 388 U.S. 307 (1967). Similarly here, the District Court entered the Orders Prohibiting Alienation, which commanded the named defendants in the Puerto Rico Action and those acting in concert with defendants from engaging in any transfer of Apartment 10A, without requiring that the orders be recorded in a real property registry or that any asset be physically seized. (*See* Pet. 6) If Petitioners believed that the Orders Prohibiting Alienation were improvidently granted by the District Court because they did not require Goya to take these steps or that they contravened a procedural rule, Petitioners were still required to obey the orders unless and until they were duly challenged and set aside, rather than engage in precisely the transaction those orders prohibited. *Cf. Popular Bank of Fla. v. Banco Popular de P.R.*, 180 F.R.D. at 465-66, discussed *supra* at note 3.

(1974). Thus, a contempt citation may not be based on an order "that can only be described as unintelligible" or issued for "disobeying a command that defies comprehension." *International Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). That is not this case. Here, as the Court of Appeals held, "it is difficult to imagine how the November 1995 orders could have been worded in a clearer, more unambiguous way." (Pet. App. 23a)

The continued effectiveness of the orders in June 1998 was not genuinely "ambiguous" either. At that time, Petitioners undisputedly knew of those orders as well as the subsequent judgment on the merits in Goya's favor, which the District Court had entered but simultaneously stayed (in accordance with the practice in Puerto Rico's local courts) so as to preserve the status quo until defendants exhausted their appeals. (*See* Pet. App. 5a-6a, 14a & n.4, 17a n.6, 20a, 36a-38a, 50a) Wallack Management and 625 Park also knew that in March 1998 — five months *after* the judgment was entered — Liliane Unanue's attorney had advised Wallack in writing that "the restraint against alienation [of Apartment 10A] continues in effect." They also knew that Liliane had recently sought a modification of the orders to permit her to sell Apartment 10A, and that in response, Judge Fusté had ordered Liliane's counsel and Goya to discuss a potential resolution to the issues raised by the motion and "to report back to the court so that it m[ight] make a final decision" on whether it would modify the orders. (*See* Pet. App. 6a, 39a; *see supra* pp. 6-7) Judge Fusté's ruling on Liliane Unanue's motion to vacate or modify the Orders Prohibiting Alienation demonstrates that those orders remained in effect in 1998 — otherwise there would have been nothing to vacate or modify — and that the orders would continue to remain in effect unless and until the court vacated them (which never

occurred). Thus, the March 1998 court order recognizing the continued validity of the Orders Prohibiting Alienation, known to Petitioners, is hardly consistent with Petitioners' claim that the continued effectiveness of those orders was "ambiguous."

Thereafter, even though a second lawyer for Liliane Unanue advised Petitioners that the proposed sale of Apartment 10A could not lawfully proceed, Petitioners went ahead with the sale while working hand-in-glove with Charles and Liliane Unanue to keep the sale secret, evidencing that all the participants in the transaction recognized that they had something to hide. (*See* Pet. App. 56a-57a) Finally, Petitioners also were sufficiently concerned about the likelihood of contempt proceedings when Goya learned of the sale that they negotiated for Rennert to indemnify 625 Park and Wallack Management against liability on Goya's claim. As the District Court cogently observed, this extraordinary "indemnification letter constitutes compelling evidence that [Petitioners] were aware of the possible illegality of the sale and their intent to allocate that risk among themselves." (Pet. App. 56a)

As the First Circuit Court of Appeals held long before this case, one who violates "a reasonably straightforward reading of [an] order" and "patently frustrate[s] the clear intent of the order" is properly held in contempt. *Gemco Latinoamerica, Inc. v. Seiko Time Corp.*, 61 F.3d 94, 99 (1st Cir. 1995). The rule regarding ambiguities in court orders and injunctions exists "to prevent unfair surprise" to persons lacking reasonable notice of what is required of them, rather than to encourage searches for loopholes in orders whose purpose is clear. *Schering Corp. v. Illinois Antibiotics Co.*, 62 F.3d 903, 906 (7th Cir. 1995) (Posner, J.). Given all that

Petitioners knew in 1998, it hardly "defie[d] comprehension" that consistent with Puerto Rico law, the Orders Prohibiting Alienation, which were entered to safeguard the ultimate enforceability of a potential judgment in Goya's favor, remained effective after the court had entered precisely such a judgment while staying the judgment's enforcement pending appeal. And given their undisputed knowledge and actions, including execution of the indemnification agreement that expressly contemplated a claim to be brought against them by Goya, Petitioners are the very last litigants who could possibly claim that the contempt proceedings came as an "unfair surprise."

Moreover, as the District Court and the Court of Appeals both observed, if Petitioners had been genuinely uncertain whether the proposed sale of Apartment 10A would violate the Orders Prohibiting Alienation, they could and should have asked for clarification from the court that issued the orders. (Pet. App. 20a-21a, 60a) Petitioners assail the lower courts' sensible suggestion that one who is unsure about the scope of duties imposed by a court order can seek a clarification or modification, but this Court made precisely the same observation more than 50 years ago. *See McComb v. Jacksonville Paper Co.*, 336 U.S. at 192; *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945); *see also International Longshoremen's Ass'n*, 389 U.S. at 70-72 (reversing contempt citation because, *inter alia*, district court had refused several requests to clarify its unclear order). Contrary to Petitioners' view, the Court of Appeals' decision was hardly "unprecedented" (Pet. 12) in suggesting that a non-party (as well as a party) concerned about potential contempt liability for violating an order can avoid any possibility of liability by seeking clarification from the court that issued the order. It was not even the first federal decision to make that observation *this year. See Quantum Corporate Funding, Ltd. v. Assist You Home Health Care Servs. of Va., L.L.C.*, 2002 WL 726666, at *3

(S.D.N.Y. Apr. 24, 2002) (non-party with actual notice of a court order that is in doubt concerning its obligations under that order "ha[s] a duty to so inquire of th[e] Court").[5] Additionally, because a non-party can be liable for violating a court order only when it aids and abets or acts in concert with a party in doing so, the non-party always has the option of asking the *party* with whom it is acting in concert to request the clarification or modification, just as defendants Charles and Liliane Unanue had already done several times in this very case. The reason that Petitioners chose not to do so in this case is crystal clear: they knew that Judge Fusté would quickly respond that the Orders Prohibiting Alienation were, of course, still in full force and effect.

Lastly, Petitioners' passing suggestion that the decision below expands the scope of contempt jurisdiction over non-parties is also incorrect. The criteria for subjecting non-parties to contempt liability for violating a court order are well-settled. (*See* Pet. App. 19a-21a) Applying those criteria, the Court of Appeals held that Petitioners' status as persons bound by the Orders Prohibiting Alienation was a "foregone conclusion[]" and "open and shut" because each of them aided and abetted a party to the action, Liliane Unanue, in her knowing violation of those orders. (Pet. App. 20a-21a) The petition cannot and does not challenge that finding.

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5. Petitioners' fleeting suggestion that such applications would give rise to "advisory opinions" in contravention of Article III (Pet. 3) is wholly without substance. *See, e.g., Hendrix v. Page*, 986 F.2d 195, 200 (7th Cir. 1993) (Posner, J.) (citing *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945)). Their suggestion that such applications overburden the judiciary (Pet. 20) is simply frivolous. The present case illustrates that the opposite is true: clearly, it would have been far less burdensome for the courts to deal with a straightforward request for clarification as to the status of the Orders Prohibiting Alienation in 1998, rather than the protracted contempt proceedings necessitated by Petitioners' disobedience of the orders.

Because the contempt adjudication against Petitioners was consistent with well-settled law, was eminently warranted, and raises no significant legal issue, certiorari should be denied.[6]

B. Petitioners' Second Question Arises Entirely Under Puerto Rico Local Law And Raises No Federal Issue

Petitioners also ask this Court to review the Court of Appeals' construction of Rule 56.4 of the Puerto Rico Rules of Civil Procedure. Specifically, the question presented is whether an order prohibiting alienation of an asset under P.R. R. Civ. P. 56.4 is enforceable against persons that undisputedly have *actual knowledge* of the order, even if it has not been possible or practicable to record the order in a public registry of real property or to physically seize the underlying asset. (*See* Pet. App. 18a n.7)

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6. While the lower courts did not need to reach the issue, nor need this Court reach it to deny certiorari, Petitioners are also liable for contempt on an additional ground, separate and apart from their violation of the Orders Prohibiting Alienation. As Petitioners were aware at all relevant times, the subject-matter of the action before the District Court concerned the true ownership of Apartment 10A and whether Goya had the right to execute its New Jersey state-court judgment against that asset. Under these circumstances, Petitioners' participation in the sale of Apartment 10A while the litigation and appeal were pending "tended to defeat any decree which the court might ultimately make in the cause," so that it constituted a "fraud of the rights of plaintiffs to prosecute the suit to its conclusion, and . . . a contempt of court which might be proceeded against civilly." *Lamb v. Cramer*, 285 U.S. 217, 219 (1932) (Stone, J.). *See also, e.g., Merrimack River Sav. Bank v. City of Clay Center*, 219 U.S. 527, 535-36 (1911); *Savoie v. Merchants Bank*, 84 F.3d 52, 59 n.6 (2d Cir. 1996); *Griffin v. County School Board*, 363 F.2d 206, 210 (4th Cir. 1966) (en banc); *Amsellem v. HQZ West 56th St. Assocs.*, 1988 WL 142501 (S.D.N.Y. Dec. 30, 1988).

On its face, and as Petitioners recognize, this question arises exclusively under the local law of the Commonwealth of Puerto Rico, which is the equivalent of state law, and raises no federal issue, much less an important one. It has been well-settled for many years that this Court does not grant certiorari to review state-law questions, except perhaps under truly extraordinary circumstances. *See, e.g., Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588, 596 (2001); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 500 (1985); *Bishop v. Wood*, 426 U.S. 341, 345-46 & n.10 (1976); *see generally* Robert L. Stern, Eugene Gressman *et al.*, *Supreme Court Practice* 134-35, 242-43 (8th ed. 2002).

Aware of the Court's disinclination to review state-law issues like this one, Petitioners seek to dress their state-law claim in federal clothing, contending that because the Court of Appeals supposedly erred in construing the Puerto Rico law of provisional remedies, it necessarily violated the mandate of *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). Petitioners are among the hundreds of disappointed litigants each year who, after their construction of state or local law has been rejected by a District Court and a Court of Appeals, try to manufacture a federal issue at the certiorari stage by transforming an alleged state-law error into an *Erie* violation. If this technique were permitted to succeed, such claims could, and quickly would, be presented by the loser of virtually every federal case presenting a state-law issue. Therefore, this Court amended what is now its Rule 10 more than twenty years ago to eliminate alleged federal-court errors of state law as grounds for granting certiorari. *See* Stern & Gressman, *supra*, at 243.

In any event, the Court of Appeals' decision-making process in this case fully conformed with *Erie*. A federal court violates *Erie* when it applies federal law to an issue properly governed by state law (or commonwealth law). But in this case, the Court of Appeals, like the District Court before it, understood, consistent with *Erie*, that it must examine and apply Puerto Rico caselaw in addressing the Puerto Rico-law issue before it. It began by defining the precise issue to be decided, noting Petitioners' tacit concession that the Orders Prohibiting Alienation were effective prior to the District Court's entry of judgment in Goya's favor, so that the only question to be addressed was whether the orders remained effective, against persons having actual notice of the orders, after the entry of judgment. (Pet. App. 10a-11a) The court recited the *de novo* standard of review applicable to this question of law. (Pet. App. 11a) Next, the Court of Appeals discussed the Puerto Rico Supreme Court's explanation of the purpose and construction of P.R. R. Civ. P. 56 in the leading case of *F.D. Rich Co. v. Superior Court*, 99 D.P.R. 158, 99 P.R.R. 155 (1970), which the First Circuit had previously quoted from, analyzed, and applied in *H.M.G. Property Investors, Inc. v. Parque Industrial Rio Cañas, Inc.*, 847 F.2d 908, 913-14 (1st Cir. 1988) (Selya, J.). (Pet. App. 11a-12a) Petitioners' suggestion that the Court of Appeals relied only on its "personal view" of how Rule 56 should be construed (Pet. 27) is wholly unwarranted.

The Court of Appeals then analyzed in detail a series of Puerto Rico Supreme Court cases arising under Rule 56.4 and its predecessor statute. (Pet. App. 13a-17a) The panel concluded that two Puerto Rico cases cited by Goya (*Freeman* and *Suárez*) were more apposite than the Puerto Rico cases cited by Petitioners (*Stargus Properties* and *Cooperativa*

Central), which it found to be readily distinguishable. (*See* Pet. App. 12a-17a)[7] The court did not "discern any other

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7. The Court of Appeals' conclusion was plainly correct. The issue was whether the Orders Prohibiting Alienation issued under P.R. R. Civ. P. 56.4 were effective as against persons with actual notice of the orders, even though it was impracticable for Goya to take certain procedural steps that Petitioners urge should have been taken. (*See* Pet. App. 18a n.7) As the Court of Appeals correctly described (Pet. App. 13a-15a), the Puerto Rico Supreme Court decisions in both *Freeman v. Superior Court*, 92 D.P.R. 1, 92 P.R.R. 1 (1965), and *Suárez Martínez v. Superior Court*, 85 D.P.R. 544, 85 P.R.R. 522 (1962), upheld prohibitions to alienate as valid under Rule 56.4 although the parties did not take the very same steps, there being no dispute that the defendants in those cases had actual notice. By contrast, in *Stargus Properties v. Superior Court*, 101 D.P.R. 95, 101 P.R.R. 139 (1973), there had been so many procedural lapses in obtaining a court order that it appeared the defendants were not even *aware* of the order they had allegedly violated; unsurprisingly, a contempt adjudication reached under these circumstances was vacated. (Pet. App. 15a-16a; *see also* Pet. App. 57a-59a) Finally, *Cooperativa Central de P.R., Inc. v. Flores*, 68 D.P.R. 726, 68 P.R.R. 672 (1948), involved an attachment of personal property, not a prohibition to alienate. (Pet. App. 16a-17a) That is a crucial difference because, as the Puerto Rico Supreme Court recently reaffirmed, "an attachment is the retention of goods by judicial order [while] a prohibition to alienate is a court's order addressed to [a] party . . . prohibiting the alienation of personal property or real estate." *Corporation for Dev. of the West, Inc. v. Municipality of Mayagüez*, No. CC-99-801 (P.R. Dec. 15, 1999) (unpublished judgment entitled to persuasive but not binding weight) (citing Rafael Hernández Colón, *Derecho Procesal Civil [Law of Civil Procedure]* 126 (1981)) (our translation from Spanish); *see also Quirós-López v. Unanue-Casal*, 998 F.2d 28, 32-33 (1st Cir. 1993) (distinguishing methods of enforcing attachments and prohibitions to alienate under Puerto Rico law); P.R. R. Civ. P. 56.4, paragraph 2 (providing procedure for effecting attachment, but not prohibition to alienate, of personal (Cont'd)

colorable argument" supporting Petitioners' contention that the orders had expired. (Pet. App. 17a). Therefore, based on the purpose, application and construction of Rule 56 as discussed in the Puerto Rico Supreme Court's decisions, the Court of Appeals accepted Goya's rather than Petitioners' position, just as had the District Court. This is precisely how federal-court analysis of a state-law issue under *Erie* is supposed to be performed.

Nothing in the opinion below suggests that the distinguished First Circuit panel did anything other than ascertain and apply the governing Puerto Rico law, or that the panel sought to avoid its *Erie*-prescribed role. Petitioners' self-interested disagreement with the Court of Appeals' analysis can hardly justify their aspersions that the panel "refused to abide by and apply" the relevant Puerto Rico Supreme Court decisions (Pet. 3) or that the panel only "purported" to follow Puerto Rico law (Pet. 23). Thus, the petition does nothing to overcome the overwhelming presumption that certiorari will not be granted on a purely state-law claim.

(Cont'd)
property through a depository); P.R. R. Civ. P. 53.9 (providing that judgment of a Puerto Rico court is automatically stayed pending appeal, implying that provisional remedies intended to secure a judgment favorable to plaintiff should continue in effect while the appeal is decided and until the judgment is executed) (*see* Pet. App. 17a n.6).

CONCLUSION

For all the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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